

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

DERRICK THOMPSON, by his)
Guardian Ad Litem, KELLY M.) C.A. No. K09C-11-041 JTV
NEVILLE-THOMPSON,)
)
Plaintiffs,)
)
v.)
)
JAMES ROBERT SINNOTT, and)
CATHERINE A. PEPPER, a/k/a)
CATHERINE SINNOTT,)
)
Defendants.)

Submitted: January 14, 2011

Decided: April 26, 2011

Nicholas H. Rodriguez, Esq., Schmittinger & Rodriguez, Dover, Delaware. Attorney for Plaintiffs.

Robert J. Leoni, Esq., and Michael J. Logullo, Esq., Shelsby & Leoni, Stanton, Delaware. Attorneys for Defendants.

Upon Consideration of Defendants'

Motion For Summary Judgment

DENIED

VAUGHN, President Judge

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OPINION

This case involves personal injuries from a motor vehicle accident which occurred in North Carolina. The defendants, James Robert Sinnott (“defendant Sinnott”) and Catherine A. Pepper a/k/a Catherine Sinnott (“defendant Pepper”) have filed a Motion For Summary Judgment which raises a choice of law question. The issue is whether the defense of contributory negligence, which is the law in North Carolina, or the doctrine of comparative negligence, which is the law in Delaware, applies in this case. For the reasons which follow, I have concluded that comparative negligence under Delaware law applies.

FACTS

The plaintiff, Derrick Thompson, and defendant Sinnott were students at Campbell University in North Carolina. While they were at the University, defendant Sinnott operated a motor vehicle in which the plaintiff was a passenger. At the time, defendant Sinnott was driving while under the influence of alcohol, a fact of which the plaintiff was aware.¹ Defendant Sinnott caused an accident which injured the plaintiff. The plaintiff’s permanent residence is in the state of New York, and he was treated for his injuries in both North Carolina and New York. The permanent residence of defendant Sinnott and his mother, defendant Pepper, is Delaware. Defendant Pepper is included in the action on a theory of negligent entrustment. Defendant Sinnott has a Delaware driver’s license. The motor vehicle was titled and registered in Delaware. It was insured with insurance purchased in Delaware.

¹ Defendant Sinnott later pled guilty to driving while under the influence of alcohol.

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The defendants contend that North Carolina’s law of contributory negligence should apply. In North Carolina, a party who enters a car with knowledge that the driver is under the influence is deemed to have committed contributory negligence as a matter of law.² The plaintiff does not take issue with this principle of North Carolina law, but contends in opposition to the motion that comparative negligence under the law of Delaware should apply.

STANDARD OF REVIEW

Summary judgment should be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.³ The moving party bears the burden of establishing the non-existence of material issues of fact.⁴ If a motion is properly supported, the burden shifts to the non-moving party to establish the existence of material issues of fact.⁵ In considering the motion, the facts must be viewed in the light most favorable to the non-moving party.⁶ Thus, the court must accept all undisputed factual assertions and accept the non-movant’s version of any disputed facts.⁷ Summary judgment is inappropriate “when the record reasonably

² *Bullins v. Walker*, 630 S.E.2d 743 (N.C. Ct. App. 2006)(citing *Watkins v. Hellings*, 321 N.C. 78, 81 (1987)).

³ Super. Ct. Civ. R. 56(c).

⁴ *Gray v. Allstate Ins. Co.*, 2007 WL 1334563, at *1 (Del. Super. 2007).

⁵ *Id.*

⁶ *Pierce v. Int’l Ins. Co. of Ill.*, 671 A.2d 1361, 1363 (Del. 1996).

⁷ *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99-100 (Del. 1992).

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indicates that a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.”⁸

DISCUSSION

It is well established that Delaware decides choice of law questions based upon the “most significant relationship test” set forth in the *Restatement (Second) of Conflict of Laws* (“*Restatement*”).⁹ The “most significant relationship test” is a flexible doctrine which “requires each case to be decided on its own facts.”¹⁰ *Restatement* § 6 lists a number of relevant factors which should be considered in the absence of a statutory directive on choice of law. They are as follows:

- (a) the needs of the interstate and international systems;
- (b) the relevant policies of the forum;
- (c) the relevant policies of other interested states and the relative interests of those states in the determination of a particular issue;
- (d) the protection of justified expectations;
- (e) the basic policies underlying the particular field of

⁸ *Mumford & Miller Concrete, Inc. v. New Castle County*, 2007 WL 404771, at *4 (Del. Super. 2007).

⁹ *Turner v. Lipshultz*, 619 A.2d 912 (Del. 1992); *Travelers Indem. Co. v. Lake*, 594 A.2d 38 (1991).

¹⁰ *Lake*, 594 A.2d at 48.

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law;

- (f) certainty, uniformity, and predictability of result;
and
- (g) ease in the determination and application of the law
to be applied.

General principles concerning choice of law in tort cases are set forth in *Restatement* § 145 as follows:

- (1) The rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties under the principles stated in § 6.
- (2) Contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:
 - (a) the place where the injury occurred;
 - (b) the place where the conduct causing the injury occurred;
 - (c) the domicile, residence, nationality, place of incorporation and place of business of the parties; and
 - (d) the place where the relationship, if any, between the parties is centered.

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These contacts are to be evaluated according to their relative importance with respect to the particular issue.

The contacts and factors set forth above are not to be applied simply by counting up the interests on each side, but rather “evaluated according to their relative importance with respect to the particular issue.”¹¹ In addition, if warranted, the law of one state may be found to apply to some issues, while the law of another state may be found to apply to others.¹²

With respect to personal injury cases in particular, *Restatement* § 146 provides as follows:

In an action for a personal injury, the local law of the state where the injury occurred determines the rights and liabilities of the parties, unless, with respect to the particular issue, some other state has a more significant relationship under the principles stated in § 6 to the occurrence and the parties, in which event the local law of the other state will be applied.

And, finally, with respect to the issue of contributory negligence, *Restatement* § 164 should also be considered. It provides as follows:

(1) The law selected by application of the rule of § 145 determines whether contributory fault on the part of the plaintiff precludes his recovery in whole or in part.

¹¹ *Lake*, 594 A.2d at 48, n.6 (quoting *Restatement* § 145).

¹² *Pittman v. Maldania*, 2001 WL 1221704 (Del. Super. 2001); *Marks v. Messick & Gray Construction, Inc.*, 2000 WL 703657 (Del. Super. 2000).

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(2) The applicable law will usually be the local law of the state where the injury occurred.

The defendants contend that North Carolina has the most significant relationship to the occurrence and the parties. They emphasize the fact that the accident occurred in North Carolina, that the plaintiff's medical treatment occurred in North Carolina and New York, that defendant Sinnott was charged with DUI under North Carolina Law, that the relationship between the plaintiff and defendant Sinnott was centered in North Carolina, that the plaintiff is not from Delaware, and that there is no record of his having had any previous contact with Delaware before the filing of this suit. They contend that the only relationship with Delaware is that the defendants live here.

The plaintiff contends that Delaware has the most significant relationship to the occurrence and the parties. He emphasizes that the issue is the quality of the contacts with North Carolina and Delaware, not the quantity, that the permanent residences of the parties are more important than the place of the accident or the parties temporary residence in North Carolina, that defendant Sinnott is licensed in Delaware, that the vehicle was titled and registered in Delaware, that the vehicle was insured in compliance with Delaware law, and that the vehicle could not be legally operated and the accident could not have occurred but for the contacts with Delaware.

The plaintiff also relies upon a case which I find very instructive, the case of *Conlin v. Hutcheson*.¹³ The facts of that case are very similar to the facts of this case,

¹³ 560 F.Supp. 934 (D. Colorado 1983).

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with the only significant difference being the states involved. In *Conlin*, as here, the case was brought in the state of the defendant's residence, which in that case was Colorado.¹⁴ The accident occurred in Nebraska. The plaintiff was a resident of Illinois. The issue was whether Colorado's comparative negligence law or Nebraska's contributory negligence law would apply. The court concluded that Colorado had the most significant relationship with the occurrence and parties, and that Colorado's comparative negligence law would, therefore, apply. In reaching that conclusion the court reasoned that the defendant had a Colorado driver's license, and his vehicle was insured by liability insurance purchased in Colorado. The Court further reasoned that Colorado's relevant policies, which promote rules of recovery in negligence actions, surpassed the policies of Nebraska as well as Nebraska's interest in the determination of the issue. The court also reasoned that the fact that the accident occurred in Nebraska and that the conduct which caused the injury occurred in Nebraska were not compelling contacts, and that the absence of prevailing policy considerations rendered the locale of the accident a "fortuitous consequence."¹⁵ In reaching its conclusion, the court in *Conlin* applied the *Restatement (Second) of Conflict of Laws*, and relied upon the Colorado state case of *Sabell v. Pacific Intermountain Express Co.*¹⁶ *Conlin* and *Sabell* have been cited

¹⁴ The case was brought the federal district court for the district of Colorado. The fact that it was brought in federal court rather than state court is not material.

¹⁵ *Conlin*, 560 F. Supp at 936.

¹⁶ 536 P.2d 1160 (Colo.App. 1975).

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approvingly by the Delaware Superior Court.¹⁷

Section 164's statement that the applicable law will usually be the local law of the state where the injury occurred must be read in context with Section 146 which provides that the law of the state which has the most significant relationship to the occurrence and the parties will apply.¹⁸ I find the similarity and analysis of *Conlin* to be persuasive, and after considering the facts of this case, the arguments of counsel, and the choice of law principles set forth above, I conclude that Delaware has the most significant relationship to the occurrence and the parties. I do not find the additional contacts with North Carolina in this case, which were not present or not mentioned in the *Conlin* case, such as the facts that the defendant was charged with DUI under North Carolina law and medical treatment took place in North Carolina, to be significant. Accordingly, Delaware's comparative negligence law, not contributory negligence will apply.

The defendants' Motion For Summary Judgment is ***denied***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

President Judge

cc: Prothonotary
Order Distribution
File

¹⁷ *Marks v. Messick & Gray Construction*, 2000 WL 703657 (Del. Super. 2000).

¹⁸ *Id.* at *4.